

**Special Magistrate Waterworks 2011 Hearing
City Commission Meeting Room
Judge Floyd Hull, Presiding
November 28, 2005
10:00 A.M. – 11:55 A.M.**

Staff Present:

Eve Bazer, Administrative Assistant
Dick Eaton, Secretary, Special Magistrate
Lindwell Bradley, Community Inspections Acting Assistant Director
Diana Horodecki, Waterworks 2011 Connection Coordinator
Benjamin Wallace, WaterWorks 2011
Diana Cahill, Service Clerk

Also Present:

CE04071009, CE04071008, CE04071007: Manuel Fernandez, CVS's representative, Jerry Woda, lessee, Nectaria Chakas, developer's attorney
*CE05011173: Charles Parker, owner
CE05060954: Emmitt Simeton, owner, Gloria Woodson, owner
CE05061037: Charles Baker, owner, Sandra Baker, owner
CE05012089: Lucinda Bryant, owner
CE05061036: Clifford Nicolas, owner
CE05011252: Edna Bell Ervin, owner, Kenneth Rockmore, owner
*CE04071029: Warren Hudson, representative of the owner
*CE04071012: Connie Chaney, owner
CE05061033: Michael Cocking, contractor
CE05061032: Romaxie Tolbert, owner
*CE05060448: Scott Wengrow, owner

*Massey Hearing

NOTE: All individuals who presented information to the Special Magistrate during these proceedings affirmed they would speak only the truth.

The meeting was called to order at 10:00 A.M. Judge Hull introduced himself and explained his role in ensuring adherence with the City's codes. He also pointed out that the proceedings were being recorded.

Reference CE05060448

SMW Properties LLC
2025 South Miami Road

Hearing to Impose Fine

Ms. Bazer announced that this case was first heard on August 4, 2005 with compliance ordered by November 2, 2005. The property was not yet complied and fines had accrued in the amount of \$5,000.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline on the property was April 30, 2004.

Mr. Scott Wengrow, owner, said he had appeared at the August 4 hearing and was ordered to pay the fee by November but after the damage caused by the two hurricanes, Mr. Wengrow was not able to pay the fee. He asked for an extension to December 6, 2005 to pay the fees in full.

Ms. Horodecki agreed to allow an extension to December 6, 2005. Ms. Bazer advised Mr. Wengrow to return at a future hearing to request abatement of the fine.

Judge Hull granted an extension to December 6, 2005 to pay the connection fee.

Reference CE04071029

Great Texas Foods, Inc.
1821 Southeast 10th Avenue

Hearing to Impose Fine

Ms. Bazer announced that this case was first heard on September 16, 2004 with compliance ordered by October 16, 2004. The property was complied and fines had accrued in the amount of \$23,900.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was April 30, 2004.

Mr. Warren Hudson, representative of the owner, said they were connected to the sewer via a lift station since the restaurant was built four years ago. Ms. Horodecki said the restaurant was connected to a temporary lift station, as part of an agreement between AmeriSuites, Great Texas Foods and Space Plus. In the agreement with AmeriSuites, once permanent connections were available, the other parties were supposed to abandon the temporary lift stations, make their own connections and pay the connection fee by the deadline. AmeriSuites entered into an agreement with the City to allow them until April 1, 2005 to pay. The connection fees were paid in full on June 1, 2005, the connection permit was closed on October 21 and they were complied. Ms. Horodecki recommended abatement of the fine.

Ms. Horodecki confirmed for Judge Hull that Great Texas Foods had paid \$16,569 in connection fees. Mr. Benjamin Wallace, WaterWorks 2011 explained the particulars of the agreement to Judge Hull and recommended abatement of the fine.

Judge Hull abated the fine.

Reference CE04071012

Space Plus at 17th Street
1850 South Miami Road

Hearing to Impose Fine

Ms. Bazer announced that this case was first heard on September 16, 2004 with compliance ordered by October 16, 2004. The property was complied and fines had accrued in the amount of \$23,900

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was April 30, 2004 and this was the third property involved in the previous case.

Judge Hull abated the fine.

Reference CE05011173

Charlie & Anna Parker
1007 Northwest 13th Court

Hearing to Impose Fine

Ms. Bazer announced that this case was first heard on September 15, 2005 with compliance ordered by October 15, 2005. The property was not yet complied and fines had accrued in the amount of \$4,300.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. Ms. Horodecki noted that the connection fee had been paid but there was an open connection permit and on August 3, 2005 they had failed inspection due to "no tank abandonment."

Mr. Charles Parker, owner, said he had been having difficulty getting an inspector out to confirm that he had abandoned the tank over a week ago. He had left a message for Ms. Horodecki informing her of this. Ms. Horodecki confirmed that Mr. Parker had left her the message. Mr. Parker said he never received the order informing him of the fine. He confirmed that he had spoken with Inspector Pingitore before the September 15 hearing and agreed to comply the property.

Ms. Bazer stated that Inspector Pingitore had advised her at that September 15 hearing that she intended to recommend that Judge Hull order compliance within 30 days or a fine of \$100 per day. Ms. Bazer stated Mr. Parker never picked up the certified letter. Ms.

Horodecki recommended granting an extension for 30 days for Mr. Parker to get the final inspection.

Judge Hull granted a 30-day extension.

Reference CE05060954

Emmitt Simeton
1106 Northwest 11th Court

Sec. 28-76(6)a: Sewer connection fee not paid
Sec. 28-76(6)b: Sewer connection fee not paid

Ms. Bazer announced that certified mail addressed to the owner was accepted on November 10, 2005.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. On September 1, 2004, notification was sent to Mr. Simeton that he owed a connection fee of \$2,000. On November 2, 2004, the maximum \$1,000 of the fee was financed and a permit was issued. The permit was closed on November 16, 2004. Currently, the property was connected but there was still \$800 outstanding on the fee.

Ms. Gloria Woodson, owner, stated that she had agreed with someone to pay \$50 per month toward the fee. After the hurricanes, she was not financially able to keep making the payments. She requested a new payment schedule.

Mr. Emmitt Simeton, owner, confirmed that they had spoken to someone at the City and agreed to pay \$50 per month. He insisted that they had kept paying. Ms. Horodecki said she was unaware of any agreement. She said that allowing payments would violate the ordinance, which said the fees must be paid in full. She noted that paying the fee over time would result in the City's issuing a municipal loan statement from the Water department, which would include interest. Judge Hull confirmed that the balanced owed was \$861.10; apparently, the City had deducted interest from the payments.

Mr. Ben Wallace, Waterworks 2011, stated that Treasury usually advised people to pay what they could if they could not afford to pay the fee at once. He felt that it would be best to continue with the \$50 per month payments.

Judge Hull ruled that the owner must pay \$50 per month for 16 months until the fee and interest was paid in full. If any payment was missed, the owner would be fined \$100 per day, per violation.

The following three cases were called together:

Reference CE04071007

Robert Williamson
1720 South Federal Highway

Sec. 28-33(a): Not connected to City
sewer system

Ms. Bazer announced that certified mail addressed to the owner was accepted on November 15, 2005, and certified mail addressed to the owner's attorney was accepted on November 16, 2005.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline for the properties was April 30, 2004. Currently, the properties were not connected and the connection fees had not been paid. Ms. Horodecki described the agreements tying the three properties to a temporary lift system and subsequent deadline to connect. The outstanding connection fees were: \$7,875 for 700 Southeast 17th Street; \$11,778 for 1706 South Federal Highway and \$17,517 for 1720 South Federal Highway. Interest had accumulated as well. In July 2004, Community Inspections had brought a case for non-compliance, as the properties were not connected and the fees not paid.

Ms. Horodecki continued that they had received an ERC appeal from the Miami Subs Development Manager on August 31, 2004 notifying them that the lateral was too high. This issue had been corrected on November 8, 2004 and the lateral was then available for connection to the three properties. At the December 16, 2004 Special Magistrate hearing, the properties were ordered to comply within 30 days or a fine of \$100 per day. On March 9, 2005, Waterworks received a letter from Sandra Lewis asking when the lateral would be ready for connection. On March 15, 2005, Waterworks sent a letter confirming that the lateral was completed and available. At the July 7, 2005 Special Magistrate hearing, the previous order was vacated due to improper service. On July 14, 2005, the Notice of Violation was recorded and they were ordered to appear at the August 18, 2005 hearing. At that hearing, Judge Hull ordered a continuance to November 17. That hearing had been cancelled due to a hurricane and they were then notified to appear today.

Mr. Horodecki stated that in the meantime, they had met with Mr. Jerry Woda from Miami Subs on September 29, 2005 to discuss the issue. The City Attorney had advised Waterworks that they could not make any type of deal with the connection fee because that would violate the ordinance. Mr. Woda had informed them that the property was being redeveloped into a CVS pharmacy and this was why they had not connected or paid the fee.

Ms. Nectaria Chakas, the developer's attorney, confirmed that all three structures would be demolished and redeveloped into a CVS pharmacy. They were currently in the development approval process and hoped to have all public hearings completed by March. The developer felt that it would be counterproductive connect the properties now when new

connections would be made with the new development. She requested additional time to comply.

Judge Hull recalled their appearance at the August hearing and asked what had been done since then to comply. Ms. Chakas explained that they had two public hearings and were now responding to development review comments from the City. After they responded to the DRC comments, they would submit plans to Planning and Zoning and hopefully appear before them in January.

Mr. Jerry Woda, Miami Subs lessee, pointed out that all three properties were connected to the City sewer line via a private lift station.

Mr. Benjamin Wallace, WaterWorks 2011, noted that all of the neighboring properties were required to connect by the April 30, 2004 deadline. He admitted that there had been a problem with the lateral that was the fault of the City. The other issue was the connection fee. Ms. Chakas confirmed that the developer would pay the fee when they connected for the development of the CVS.

Mr. Manuel Fernandez, the CVS representative, confirmed that the developer would be responsible for the connection fee. Mr. Fernandez clarified with Mr. Wallace that there was actually a \$40,000 fee they would have to pay to partially compensate the City for installation of the system for three properties, not just the \$7,000 for one new connection by CVS.

Judge Hull explained his thinking in trying to consider the costs for the developer, owners and the City. Mr. Woda explained that customarily, these fees were passed along to the tenants, but in this case, it seemed an undue burden to pass to the tenants, since they would be forced to relocate in a matter of months. He said they had an agreement with CVS that they would pay their own connection fee when CVS was built and connected and they would not be responsible for any Miami Subs fee. Mr. Woda thought that at the August Special Magistrate hearing, they had been exempted from connecting [except through the temporary private lift station] and paying the fee.

Mr. Wallace said the approximate cost of the connection fee for the CVS would be half the cost for the three existing properties. Judge Hull wanted to be sure that the complete current outstanding fee amount would be paid to the City eventually. Mr. Woda felt it would be fair for Miami Subs to pay half the connection fee today and the balance would be picked up by CVS. If the deal with CVS fell through, Miami Subs would then be responsible for the balance of the connection fee.

Ms. Horodecki agreed that Waterworks would compute what CVS's connection fee would be based on the store's square footage, CVS would be responsible for that amount, and Miami Subs would be responsible for the balance. Ms. Chakas noted that since the CVS only had a site plan submitted with the City, they could not pay the fee now.

Mr. Wallace suggested that a calculation be made based on the existing site plan, Miami Subs would pay their portion immediately and would be responsible for the balance if the deal with CVS fell through. Mr. Woda agreed. Judge Hull suggested six months for the process to be completed. Ms. Chakas and Mr. Fernandez agreed.

Judge Hull ruled that a pro-rated connection fee would be determined, Miami Subs would pay its share within 14 days and CVS [or Miami Subs] would pay the balance by May 22, 2006 or a fine of \$100 per day would be imposed.

Reference CE04071008

Robert Williamson
1706 South Federal Highway

Sec. 28-33(a): Not connected to City
sewer system

Ms. Bazer announced that certified mail addressed to the owner was accepted on November 15, 2005, and certified mail addressed to the owner's attorney was accepted on November 16, 2005.

Judge Hull ruled that a pro-rated connection fee would be determined, Miami Subs would pay its share within 14 days and CVS [or Miami Subs] would pay the balance by May 22, 2006 or a fine of \$100 per day would be imposed.

Reference CE04071009

Robert Williamson
700 Southeast 17th Street

Sec. 28-33(a): Not connected to City
sewer system

Ms. Bazer announced that certified mail addressed to the owner was accepted on November 15, 2005, and certified mail addressed to the owner's attorney was accepted on November 16, 2005.

Judge Hull ruled that a pro-rated connection fee would be determined, Miami Subs would pay its share within 14 days and CVS [or Miami Subs] would pay the balance by May 22, 2006 or a fine of \$100 per day would be imposed.

Reference CE05012152

Edna Ervin & Kenneth Rockmore
1510 Northwest 11th Court

Sec. 28-33(a): Not connected to City sewer
system

Ms. Bazer announced that service was via the owner's appearance at this hearing.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. On November 17, 2004, the fee had been financed and on November 30, 2004, the permit was issued. The connection fee had been paid, but they had never passed final inspection.

Mr. Kenneth Rockmore, owner, stated that had been inspected on December 2, 2005. The problem was caused by Mr. Rockmore's inability to find the receipt for the septic tank's pumping. Mr. Rockmore said the City's inspector was present when the tank was pumped; he didn't know why the inspector had not declared the inspection passed.

Mr. Benjamin Wallace, WaterWorks 2011, noted that the inspection form contained a note that the tank was pumped on December 3, 2004. He did not know why the form was never finalized. He suggested that another inspector visit the property to confirm. Judge Hull advised Mr. Rockmore to contact the Building Department and arrange for another inspector to confirm compliance. Judge Hull continued the case to January 23, 2006.

Reference CE05061037

Charles Baker
1406 Northwest 11th Street

Sec. 28-33(a): Not connected to City sewer system

Ms. Bazer announced that service was via the owner's appearance at this hearing.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. Ms. Horodecki confirmed that Mr. Baker assumed ownership of the property in July 2005 and the connection fee was paid on July 29, 2005, but no permit had ever been issued and no connection had ever been made.

Ms. Sandra Baker, owner, confirmed they had purchased the property in July, but noted they were unaware of any problems until this month. She noted that the notices had been sent to the wrong address. She asked for additional time to comply.

Judge Hull found in favor of the City and ordered compliance within 60 days or a fine of \$100 per day would be imposed.

Reference CE05061033

Michael Gordon
1522 Northwest 11th Street

Sec. 28-33(a): Not connected to City sewer system

Ms. Bazer announced that service was via the owner's appearance at this hearing.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. Mr. Gordon had purchased the property in

May 2005 and paid the connection fee. A permit was issued on May 25 but there was never a final inspection.

Mr. Michael Cocking, contractor, said someone had removed the permit from the property and the inspector had therefore never done the final inspection. Mr. Cocking had obtained a duplicate permit, but admitted there would be no pumping receipt and knew he would need to return to the Building Department with the receipt. He requested additional time to comply.

Judge Hull found in favor of the City and ordered compliance by January 23, 2006 or a fine of \$100 per day would be imposed.

Reference CE05012089

Lucinda & Tiffany Bryant
1403 Northwest 13th Court

Sec. 28-33(a): Not connected to City sewer
system

Ms. Bazer announced that certified mail addressed to the owner was accepted on November 10, 2005.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. On November 8, 2004 the fee had been financed, and on November 19, 2004 the permit had been issued but the property had never passed final inspection for failure to provide a plan, a permit and a pump-out receipt.

Ms. Lucinda Bryant, owner, produced the receipt for the pump-out and other paperwork.

Judge Hull found in favor of the City and ordered compliance by January 23, 2006 or a fine of \$100 per day would be imposed.

Reference CE05061032

Romaxie Tolbert and Ruther Britton
1600 Northwest 12th Street

Sec. 28-33(a): Not connected to City sewer
system

Ms. Bazer announced that service was via the owner's appearance at this hearing.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. On November 2, 2004 the connection fee was paid by the previous owner but no permit had ever been issued. Mr. Tolbert and Ms. Britton bought the property in February 2005.

Mr. Romaxie Tolbert, owner, said he was experiencing financial difficulties and requested additional time to comply. .

Judge Hull found in favor of the City and ordered compliance by January 23, 2006 or a fine of \$100 per day would be imposed.

Reference CE05061036

Clifford Nicolas
1416 Northwest 13th Place

Sec. 28-33(a): Not connected to City sewer system

Ms. Bazer announced that certified mail addressed to the owner was accepted on November 15, 2005

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. The connection fee had been paid by the previous owner on December 23, 2004. Mr. Nicolas bought the property in June 2005 and the permit was issued on June 8, 2005 but no final inspection had ever been scheduled.

Mr. Clifford Nicolas, owner, explained that he had given money for the work to the property tenants and they had never had the work done. He requested additional time to comply.

Judge Hull found in favor of the City and ordered compliance by January 23, 2006 or a fine of \$100 per day would be imposed.

Reference CE05011826

United Investment Funding Inc.
1225 Northwest 14th Court

Sec. 28-33(a): Not connected to City sewer system

Ms. Bazer announced that personal service had been made to the registered agent by Code Supervisor Murray on November 17, 2005.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. The connection fee was never paid and no permit was ever issued.

Judge Hull found in favor of the City and ordered compliance by January 23, 2006 or a fine of \$100 per day would be imposed.

Reference CE05012155

Glenn & Mara Powell
1511 Northwest 11th Street

Sec. 28-33(a): Not connected to City sewer system

Ms. Bazer announced that certified mail addressed to the owner was accepted on November 15, 2005.

Ms. Diana Horodecki, Waterworks 2011 Connection Coordinator, testified that the connection deadline was December 1, 2004. The connection fee was never paid and no permit was ever issued.

Judge Hull found in favor of the City and ordered compliance by January 23, 2006 or a fine of \$100 per day would be imposed.

Cases Complied

Ms. Bazer announced that the below listed cases were in compliance. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

CE05011158 CE05011165 CE05061038

Cases Pending Service

Ms. Bazer announced that the below listed cases had been withdrawn pending service to the respondents. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

CE05011171 CE05011805 CE05011838 CE05012085
CE05012113 CE05012130 CE05012157 CE05012172
CE05012174 CE05060798 CE05061034 CE05061039

Cases Rescheduled

Ms. Bazer announced that the below listed cases had been rescheduled. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

CE04071028

Approved for Claim of Lien

Ms. Bazer presented Judge Hull with the following cases to sign the order to impose the fine, which Judge Hull signed based on the affidavits of the inspectors

CE04110241 - \$ 8,300

There being no further business, the hearing was adjourned at 11:55 a.m.

Special Magistrate

ATTEST:

Clerk, Special Magistrate